

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

ERICA MORENO, and )  
KATTI PUTNAM )  
Plaintiffs )  
v. )  
MICHIGAN DEPARTMENT OF CORRECTIONS )  
ABSCONDER RECOVERY UNIT INVESTIGATOR )  
RON HUGHES, )  
Defendant. )

**COMPLAINT AND JURY DEMAND**

Plaintiffs Erica Moreno (“Moreno”) and Katti Putnam (“Putnam,” collectively “Plaintiffs”), by and through their attorneys, Olson PLLC, state the following for their Complaint against Defendant Michigan Department Of Corrections Absconder Recovery Unit Investigator Ron Hughes (“Hughes”):

1. This is a civil action arising under 42 U.S.C. § 1983 and common law avenues of recovery for deprivations of Plaintiffs’ rights against Defendant.

2. Plaintiffs sue the Defendant in his individual capacity.

**JURISDICTION**

3. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331, 1367(a) and § 1341.

### **VENUE**

4. Venue is proper under 28 U.S.C. § 1391(b).

5. At all times relevant herein, Plaintiffs resided and were citizens of Flint, Michigan.

6. Defendant is a Michigan Department of Corrections Absconder Recovery Unit Investigator who acted under color of State law, and is a person for purposes of a 42 U.S.C. § 1983 action.

### **COLOR OF STATE LAW**

7. At all times relevant herein, Defendant Hughes acted under color of state law.

8. Particularly, Defendant Hughes acted under color of the laws, statutes, ordinances, regulations, policies, customs and usages of the State of Michigan.

### **FACTUAL BACKGROUND**

9. On June 18, 2014, Plaintiffs owned 58-pound female dog named "Clohe."

10. On June 18, 2014, Clohe was approximately fifteen years old.

11. On June 18, 2014, Plaintiffs and Clohe resided at 1034 Alvord, Flint, Michigan 48507.

12. At all times relevant herein, Clohe had a dog collar and tag around her neck.

13. Clohe is a friendly family dog who gets along with her neighbors and never has attacked or bitten anyone.

14. On June 18, 2014, Defendant along with several Michigan State Troopers and a City of Flint police officer arrived at Plaintiffs residence to execute a warrant for a fugitive named Matthew Mitchell.

15. Mitchell did not and never did reside or occupy Plaintiffs' residence.

16. Instead, Plaintiffs subsequently learned that Mitchell lived at 1020 Alvord, which was located next door to Plaintiffs residence.

17. Meanwhile, Defendant Hughes entered into Plaintiffs' back yard without a search warrant authorizing such entry.

18. At that time, Plaintiffs' door to the back yard was open.

19. At that time, Clohe went into her back yard through the open back door of the house.

20. June 18, 2014, Plaintiffs' next door neighbor, Jimmy Armstrong witnessed Defendant Hughes shoot Clohe in the face as she walked down the stairs to go into Plaintiffs' back yard.

21. Mr. Armstrong has signed an affidavit stating that Clohe was not attacking or threatening any officer at any time.

22. Mr. Armstrong's Affidavit further states that Hughes "shot Clohe for no reason at all."

23. Both Plaintiffs heard the gunshots and ran to Clohe's aid.

24. Clohe sustained one gun shot wound to the muzzle and was bleeding from the wound.

25. Plaintiffs and Armstrong heard officers state that they had gone to the wrong house to search for the fugitive.

26. Next, officers shouted to Plaintiffs to take Clohe to the veterinary hospital.

27. State Trooper Cavanaugh said to Plaintiffs that, "We'll take care of this."

28. Next Plaintiffs drove Clohe to the veterinary hospital.

29. Another Michigan State Trooper (who was not involved with the incident that culminated in shooting Clohe) pulled Plaintiffs over for speeding.

30. That State Trooper then escorted Plaintiffs to the veterinary hospital.

31. Clohe lost a portion of her tongue, a canine tooth and endured three surgeries to repair damage suffered from the gun shot injuries that Hughes inflicted on her.

32. Veterinary Medical Hospital, P.C., 3252 Miller Road, Flint, Michigan 48507, removed a bullet and bullet fragments from Clohe.

33. Mr. Armstrong and other neighbors witnessed Defendant and several Michigan State Troopers remain on Plaintiffs' property for about an hour after Plaintiffs took Clohe to the veterinary hospital, during which time they searched Plaintiffs' back yard for shell casings and took photographs.

34. Following the shooting incident, Plaintiffs placed several phone calls to Michigan State Trooper Cavanaugh and Michigan State Trooper Durand about the incident.

35. No Michigan State Trooper or representative ever returned Plaintiffs' calls.

36. In sum, Defendant went to the wrong house to execute an arrest warrant and shot Plaintiffs' dog without any reasonable basis for doing so.

37. Police officers recognized and acknowledge their mistake and told Plaintiffs that they would "take care of this."

38. Defendant did not "take care of this."

39. No citation of any sort was filed against any Plaintiff.

**COUNT I**  
**VIOLATION OF CIVIL RIGHTS**  
**42 U.S.C. § 1983 AND FOURTH AMENDMENT**  
**AGAINST THE INDIVIDUAL DEFENDANTS**  
**FOR COMPENSATORY DAMAGES, PUNITIVE DAMAGES**  
**AND ATTORNEY'S FEES**

40. Plaintiffs re-allege all of the preceding paragraphs as if set forth fully herein.

41. The Fourth Amendment of the United States Constitution, U.S. Const. amend. IV, prohibits the government from unreasonably destroying or seizing a citizen's property.

42. "The destruction of property by state officials poses as much of a threat, if not more, to people's right to be 'secure . . . in their effects' as does the physical taking of them." *Fuller v. Vines*, 36 F.3d 65, 68 (9th Cir. 1994), overruled on other grounds, *Robinson v. Solano County*, 278 F.3d 1007, 1013 (9th Cir. 2002).

43. Shooting a "dog is a destruction recognized as a seizure under the Fourth Amendment" and can constitute a cognizable claim under § 1983. *Id.*

44. Dogs are more than just a personal effect. *San Jose Charter of the Hells Angels Motorcycle Club v. City of San Jose*, 402 F.3d 962, 975 (9<sup>th</sup> Cir. 2005) (holding that defendant police's shooting of plaintiff's dogs was an unreasonable seizure).

45. The emotional attachment to a family's dog is not comparable to a possessory interest in furniture. *Id.*

46. Indeed, Plaintiffs' Fourth Amendment interests involved are substantial because "the bond between a dog owner and his pet can be strong and enduring," and Plaintiff thinks of Clohe "in terms of an emotional relationship, rather than a property relationship." *Altman v. City of High Point, N.C.*, 330 F.3d 194, 205 (4th Cir. 2003).

47. In circumstances where, as here, the dog does not pose an imminent threat, the shooting of the dog is an unreasonable seizure. *Dziekan v. Gaynor*, 376 F. Supp. 2d 267, 270-71 (D. Conn. 2005) (citing cases and discussing of *San Jose Charter of the Hells Angels Motorcycle Club*, 402 F.3d at 975).

48. Defendant's acts described herein were objectively unreasonable allowing for the fact that police officers are often forced to make split-second judgments — in circumstances that are tense, uncertain, and rapidly evolving — about the amount of force that is necessary in a particular situation. *Graham v. Connor*, 490 U.S. 386, 396-97, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989).

49. Indeed, Defendant's acts described herein were intentional, grossly negligent, amounted to reckless or callous indifference to Plaintiffs' constitutional rights.

50. Defendant's shooting of Clohe was unreasonable under the totality of the circumstances and therefore constituted an unreasonable seizure under the Fourth Amendment.

51. Defendant's shooting of Clohe was more intrusive than necessary. *Florida v. Royer*, 460 U.S. 491, 504 (1983) ("A seizure becomes unlawful when it is 'more intrusive than necessary'").

52. No governmental interest justifies the intrusion involved in this case.

53. The right to possess a dog is clearly established. *Leshner v. Reed*, 12 F.3d 148, 150-51 (8th Cir. 1994).

54. Defendant's shooting Plaintiffs' dog Clohe was objectively unreasonable because Clohe was not barking or making any threatening gesture towards Defendant – instead, apparently, Defendant shot Clohe for no reason at all.

55. Defendant was not in any immediate danger that would have justified the use of deadly force. *Fuller v. Vines*, 36 F.3d 65 (9th Cir. 1994).



**COMPENSATORY DAMAGES**

56. Under 42 U.S.C. § 1983 Plaintiffs are entitled to an award of compensatory damages against the Defendant in his individual capacity.

**PUNITIVE DAMAGES**

57. The Defendant's actions were:

- a. Reckless;
- b. Showed callous indifference toward the rights of Plaintiff; and
- c. Were taken in the face of a perceived risk that the actions would violate federal law.

58. Plaintiffs are entitled to an award of punitive damages against the Defendant in his individual capacity, in order to punish him and to deter others.

**ATTORNEY'S FEES**

59. Under 42 U.S.C. § 1988 if Plaintiffs are the prevailing party in this litigation, then they will be entitled to receive an award of reasonable attorney's fees, non-taxable expenses and costs.

WHEREFORE, Plaintiffs pray for judgment under 42 U.S.C. § 1983 and 1988 against the individual Defendant in his individual capacity, for compensatory damages in a fair and reasonable amount, for punitive

damages, for reasonable attorney's fees, for and non-taxable expenses, for costs, and Plaintiffs pray for such other relief as may be just under the circumstances and consistent with the purpose of 42 U.S.C. § 1983.

## **COUNT II CONVERSION**

60. Plaintiffs repeat their prior allegations.

61. "Conversion is any distinct act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his rights therein." *Thoma v. Tracy Motor Sales, Inc.*, 360 Mich. 434, 438, 104 N.W.2d 360 (1960)(quoting *Nelson & Witt v. Texas Co.*, 256 Mich 65, 70)).

62. Defendant's shooting of Clohe was a distinct act of dominion wrongfully exerted over Plaintiffs' dog in denial of or inconsistent with their rights.

WHEREFORE, Plaintiffs request relief under applicable law or in equity, including, without limitation, a judgment and an award of statutory treble damages and all reasonable costs, interest and attorney fees. M.C.L. § 600.2919a.

## **COUNT III INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

63. Plaintiffs incorporate their prior allegations.

64. Defendant's conduct described herein was extreme and outrageous conduct because it was beyond all possible bounds of decency and could be regarded as atrocious and utterly intolerable in a civilized community and would (and in fact has) cause an average member of the community would . . . exclaim, "Outrageous!"

65. Defendant's actions described herein were intentional or reckless.

66. Defendant's actions caused Plaintiffs severe emotional distress so severe that no reasonable person could be expected to endure it, including without limitation, severe horror, grief and anger over the shooting of Clohe, nausea, inability to eat, loss of sleep, inability to concentrate among others. *Haverbush v. Powelson*, 217 Mich. App. 228, 234-35 (1996).

WHEREFORE, Plaintiffs request a judgment for damages, exemplary damages, reasonable attorneys' fees and costs and any other relief that the Court deems just and equitable.

### **DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands trial by jury in this action of all issues so triable.

Respectfully submitted,

OLSON PLLC

s/Christopher S. Olson  
Christopher S. Olson (P58780)  
32121 Woodward Avenue  
Suite 300  
Royal Oak, Michigan 48073  
(248) 672-7368  
(248) 415-6263 Facsimile  
colson@olsonpllc.mygbiz.com  
*Attorney for Plaintiff*

Dated: October 3, 2014  
Flint, Michigan